

Department of Energy

§ 1017.11

physical state or form, contained in these facilities; or

(3) Nuclear material to be used for military applications, regardless of its physical state or form, that is in transit.

(c) *Category C—Declassified Controlled Nuclear Weapon Information.* This category includes certain declassified government information concerning the design, manufacture, or utilization of nuclear weapons or components of nuclear weapons that was once classified as Restricted Data but which has been declassified or removed from the Restricted Data Category by the Assistant Secretary for Defense Programs (or the head of predecessor agencies of the Department of Energy) under section 142 of the Atomic Energy Act.

§ 1017.9 Adverse effect test.

(a) *Determination.* In order for a Controlling Official to control government information as UCNI, the Controlling Official shall make a determination that the unauthorized dissemination of the government information under review could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security by significantly increasing the likelihood of—

(1) Illegal production of a nuclear weapon; or

(2) Theft, diversion, or sabotage of nuclear material, equipment, or facilities.

(b) *Other factors.* In making a determination under § 1017.9(a), a Controlling Official may consider how the dissemination of government information under review for control as UCNI could assist a potential criminal in—

(1) Selecting a target for an act of theft, diversion, or sabotage of nuclear material, equipment, or facilities (e.g., relative importance of a facility; location, form, and quantity of nuclear material);

(2) Planning and committing an act of theft, diversion, or sabotage of nuclear material, equipment, or facilities (e.g., design of operational and security systems; building plans; methods and procedures for transfer, accountability, and handling of nuclear material; secu-

rity plans, procedures, and capabilities);

(3) Measuring the success of an act of theft, diversion or sabotage of nuclear material, equipment, or facilities (e.g., actual or hypothetical consequences of the sabotage of specific vital equipment or facilities);

(4) Illegally fabricating, acquiring, or detonating a nuclear explosive device (e.g., unclassified nuclear weapon design information useful in designing a primitive nuclear device; location of unique nuclear materials needed to fabricate such a device; location of a nuclear weapon); or

(5) Dispersing hazardous nuclear material which could be used as an environmental contaminant (e.g., location, form, and quantity of nuclear material).

§ 1017.10 Nuclear material determinations.

(a) The Secretary may determine that a material other than special nuclear material, byproduct material, or source material as defined by the Atomic Energy Act is included within the scope of the term “nuclear material” if—

(1) The material is used in the production, testing, utilization; or assembly of atomic weapons or components of atomic weapons; and

(2) Unauthorized acquisition of the material could reasonably be expected to result in a significant adverse effect on the health and safety of the public or the common defense and security because the specific material—

(i) Could be used as a hazardous environmental contaminant; or

(ii) Could be of significant assistance in the illegal production of a nuclear weapon.

(b) Designation of a material as a nuclear material under paragraph (a) of this section does not make all information about the material UCNI. Specific information about the material must still meet each of the criteria in § 1017.7(b) prior to its being identified and controlled as UCNI.

§ 1017.11 Quarterly report.

The Assistant Secretary for Defense Programs shall prepare a report on a quarterly basis, to be made available